

**STANDING COMMITTEE ON
UNIFORM LEGISLATION AND STATUTES REVIEW**

CROSS-BORDER JUSTICE BILL 2007

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
WEDNESDAY, 5 DECEMBER 2007**

SESSION ONE

Members

**Hon Simon O'Brien (Chairman)
Hon Matthew Benson-Lidholm
Hon Donna Faragher
Hon Sheila Mills**

Hearing commenced at 9.36 am

THOMAS, MS HELEN

**Acting Manager, Strategic Business Development, Court and Tribunal Services Division,
Department of the Attorney General,
International House,
26 St Georges Terrace,
Perth 6000, sworn and examined:**

JAMIESON, MRS GALE

**Assistant Parliamentary Counsel,
Level 11, 141 St Georges Terrace,
Perth 6000, sworn and examined:**

SKESTERIS, MR ROBERT

**Executive Manager, Indigenous Community Diversity and Corporate Research, WA Police,
WA Police Academy,
27 Lakeside Drive,
Joondalup 6027, sworn and examined:**

GAUNT, INSPECTOR DARRYL

**Project Manager, Remote Service Delivery Project, WA Police,
2 Adelaide Terrace,
East Perth 6004, sworn and examined:**

The CHAIRMAN: On behalf of the committee, I would like to welcome you to our hearing. To begin with, I would ask you to state your full name, your contact address and the capacity in which you appear before the committee.

Ms Thomas: Helen Thomas, Court and Tribunal Services Division of the Department of the Attorney General, Level 15, International House, 26 St Georges Terrace, Perth. I am an instructing officer on the Cross-border Justice Bill.

The CHAIRMAN: Thanks very much, Ms Thomas.

Mrs Jamieson: Gale Louise Jamieson. I am from the Parliamentary Counsel's Office, Level 11, 141 St Georges Terrace. I am Assistant Parliamentary Counsel with the Parliamentary Counsel's Office, and I drafted the Cross-border Justice Bill.

The CHAIRMAN: Thank you.

Mr Skesteris: Robert Skesteris, Executive Manager of the WA Police Indigenous Community Diversity and Corporate Research Unit. The address is 27 Lakeside Drive, Joondalup, at the WA Police Academy, and the phone number is 9301 9675.

Inspector Gaunt: Inspector Darryl Gaunt, Police Headquarters, 2 Adelaide Terrace, East Perth. I am the Project Manager of the Remote Service Delivery Project, which deals with the establishment of the multifunctional police facilities in remote indigenous communities in Western Australia and the Northern Territory.

The CHAIRMAN: Witnesses, you will have signed a document entitled “Information for Witnesses”. Have you all read and understood that document?

The Witnesses: Yes.

The CHAIRMAN: All witnesses have indicated in the affirmative.

I will introduce my colleagues here at the hearing this morning: on my left, Hon Matt Benson-Lidholm, MLC; our committee advisory officer, Dr Colin Huntly; on my right, Hon Donna Faragher; and our committee clerk is Ms Jan Paniperis, with whom you have had dealings.

These proceedings are being recorded by Hansard, and a transcript of your evidence will be provided to you. To assist the committee and Hansard, could you please quote the full title of any document you refer to during the course of this hearing, for the record. Please be aware of the microphones and talk into them. They are pretty good directional microphones, but if you are handling papers, you might be careful not to obscure them. I remind you that your transcript will become a matter for the public record. If for some reason you wish to make a confidential statement during today’s proceedings, you should request that the evidence be taken in closed session. If the committee grants your request, any public and media in attendance will be excluded from the hearing. Please note that until such time as the transcript of your public evidence is finalised, it should not be made public. I advise you that premature publication or disclosure of public evidence may constitute a contempt of Parliament and may mean that the material published or disclosed is not subject to parliamentary privilege.

In accordance with our new procedure, I will now ask our committee clerk to have all witnesses swear an oath or take an affirmation.

[Witnesses took the oath or affirmation.]

[9.40 am]

The CHAIRMAN: Thank you. I thought I might address a couple of questions initially to our representatives from the police, because they may wish then to go about other business, whereas other witnesses have to be with us for some other matters. If I do that, firstly, could either Robert or Inspector Gaunt explain to the committee the sort of practical problems that have given rise to the need for this bill?

Inspector Gaunt: I will give that, if you like, sir. The practical issues have come about predominantly because of our presence in the region now. We now have police at Kintore in both WA and the Northern Territory servicing both Western Australian and Northern Territory communities. We have the two multifunctional sites at Warakurna and Warburton, and we are establishing a third at Blackstone in that tri-state area. Much of these issues have come about from a renewed law and order presence in that area. In the past, it was a drive-in, drive-out type arrangement. Offenders would cross borders fully knowing that the processes and bureaucracy of pursuing them for relatively minor matters involved extradition, which we were unable to take because of the level of those offences. There have been numerous occurrences with offenders, particularly in areas of family violence. The NPY Women’s Council in the Northern Territory, based out of Alice Springs, which crosses and deals with that tri-state area had great deals of anecdotal evidence of offenders crossing borders until police had moved away from the area and then travelled back again. Police were generally only in those areas for a matter of hours before they moved on to the next community. Our presence there now has exacerbated the position by offenders moving across borders. These offenders recognise the borders but do not identify with them because of the traditional homeland arrangement where they move through that area without identifying the border that they are crossing into another jurisdiction. The policing implications are, obviously, an officer, for example, from Kintore - the WA officer - travelling to Kiwirrkurra cannot take an offender back across the border to process him at his home station. These are the type of practical implications and impediments that we are finding; that we need to treat this area

differently to other areas because it is different. The people identify with that region, as opposed to states or territories, and that is a practical implication. Kiwirrkurra and Kintore are one family group, yet they are located in different jurisdictions, state and territories. So they are the practical implications we have of people moving across borders - most of the time not to be evasive, but simply because that is their normal movement, whether they have committed an offence or not. But the ability to deal with them in a practical manner is not there, unless we follow an extradition process, which is highly unlikely to be undertaken because of the cost.

The CHAIRMAN: So in future this proposed legislation would make it easier for police from those several jurisdictions by being able to have the offender dealt with in the other jurisdiction. Is that the gist of it?

Inspector Gaunt: That is exactly, sir. We have WA and Northern Territory police based at Kintore in the territory. We have WA and Northern Territory police based at Warakurna in WA. They service communities on either side of the border, and we have a reciprocal arrangement where each are special constables for the other's area, but it still only enables them to carry out those functions within that area. So, for instance, the WA officer could arrest someone and process them entirely in Kintore for a Northern Territory offence, but cannot do the same with the offenders from Kiwirrkurra in WA, and vice versa with Docker River in the territory and Warakurna. This will now enable them to cross that border and process them and deal with them, as the community actually already expect us to do and are asking us to do, but, obviously, there are legal impediments to doing that.

Mr Skesteris: Can I also add to that?

The CHAIRMAN: Yes.

Mr Skesteris: These regions are extremely remote and probably some of the most remote parts of the state. Basic infrastructure, like the road from Kintore to Kiwirrkurra, runs east-west, and there have been some very practical examples. When police have had to actually apprehend someone from Kiwirrkurra, the only way to get them to the nearest court or police facility in Western Australia is actually to drive back across the border and then back into Western Australia, because the road just does not exist and you cannot do it. In very early stages, there were examples where having to actually detain somebody and actually getting them before the court was probably a harsher outcome than the penalty or the offence that has been committed. So, in order to be able to deal with them at Kintore where you have got the same group - the Pintubi people, which are the ones who live at both groups - to deal with them in the Northern Territory, it is basically dealing with them at home and enabling sort of the justice to be seen to be done but also being very fair, simply because of the remoteness and the distances to be travelled. The border then just creates a whole lot of occupational health and safety issues and further complicates matters, and just makes the work of the people and the actual outcomes far more out of proportion to the issues that are being dealt with. When you look at Western Australia and the communities that are on the border from north to south, I actually have a draft map of the cross-border boundaries, which was developed in consultation with the three police jurisdictions, and it is also based on what is considered as the cross-border region by the NPY women's group, so I will table that for people to look at.

The CHAIRMAN: Thank you for that. Yes, that is tabled, and a very useful document.

Mr Skesteris: It will give you a very sort of practical understanding of the border between Northern Territory, WA and South Australia, and Northern Territory and South Australia, because there are communities in Northern Territory and South Australia which are on either side.

On a whole range of issues, I think in 2005 we had a workshop between the three policing jurisdictions that was held in Warburton and we considered a number of scenarios in terms of the range of policing tasks that would be improved by the Cross-border Justice Bill. It was quite

enlightening, because after the workshop was held, there was an incident that occurred on the Northern Territory. There was a road accident where the vehicle did not stop and then ended up in South Australia. Then you had the issue of the incident occurring in the Northern Territory, and then the evidence and all the associated investigation having to be conducted in South Australia, and that actually created a bit of a dilemma - it would have previously, but once the issues in terms of working in the cross-border region had been considered, it actually enabled the understanding that if the bill was in place, this would become a far more seamless exercise and it would result in a faster investigation and an outcome to the incident.

The CHAIRMAN: Can you give us a feel for how many offences would be pursued under this legislation? How big is the problem?

Inspector Gaunt: I cannot provide those statistics off the top of my head. I can tell you that, just as with the WA Police presence in these areas, we are actually finding that we are detecting offences and they have been reported as a result of us being there, more so than not being investigated in the past. So, much of it was not reported to police, and much of it is identified by police in those areas. So, if we use Docker River for an example, WA police had very little dealings with Docker River, even as special constables prior to this; but now that they are working in concert with the Northern Territory police, they are coming across these issues regularly because they have actually established a presence in those areas. There are flow-on effects for both Warakurna and those nearby communities and Docker River, because these people move between those communities. So the offences are very difficult to quantify, because people are still developing a trust with the police out there, particularly in the areas of child abuse and family violence, to actually highlight those issues and, as you have seen from the issues in the Kimberley, those issues have only arisen after we have been there for a few years and develop that trust, and now it has exploded. Now, those issues existed before, but it was difficult to quantify it. This is a very similar situation; it is difficult to quantify what the problem is until we are actually in there more regularly. But we certainly know that population drift and movement is occurring on a daily basis between those areas of both good and not-so-good people; for good intent and no intent. I cannot give you those statistics off the top of my head though.

[9.50 am]

The CHAIRMAN: It seems to be an ongoing problem for all three police jurisdictions.

Inspector Gaunt: Absolutely.

The CHAIRMAN: I guess the difference that this legislation would make, from the point of view of the Western Australia Police, for example, is that if we have an offence committed on the Western Australian side of the border in Kintore, and the offenders turn up in the Northern Territory at the Kintore community, they can now be dealt with, for the offence in Western Australia, in the Northern Territory. Is that correct?

Inspector Gaunt: That is correct.

The CHAIRMAN: In practical terms, who would actually do the charging of those offenders and prosecuting of those offenders in the Northern Territory?

Inspector Gaunt: The reality is that any of us could; any of those jurisdictions could do that; but they would do it in relation to the jurisdiction where the offence occurred. So the Northern Territory police could carry that out in Kintore, but they would have to do it by our rules - by the way we do it, using our systems - and vice versa in all those other jurisdictions. Obviously, we will all provide support, and where we can, we would still prefer the home jurisdiction to do that, simply because they have a better knowledge of it. But, certainly, the visiting Alice Springs magistrate, for example, can hear that charge and can sentence that person, and then the benefit to us, particularly in that example, is - the custodial impacts of that are that person could then, if they got a custodial sentence, serve that sentence in Alice Springs, which is closer. It is more expedient to move them

there, and they are actually closer to their own people when they are released, so they do not have a situation of having to find their way back from Kalgoorlie, some thousand kilometres away; they can find their way back from Alice Springs. But their own homeland peoples are in that area, so they get that support from their family who can visit them. So there are flow-on effects, other than just the policing implications.

The CHAIRMAN: Whereas at the moment what we would have to do would be to extradite the alleged offender from the Kintore community on the Northern Territory side, and transport them all the way back.

Inspector Gaunt: Yes. If they were in Kintore, we would have to extradite them into Western Australia, and probably fly them to Perth or Kalgoorlie.

The CHAIRMAN: I also understand, and perhaps you could confirm with me, that the provisions in this bill are not to be confused with existing arrangements for hot pursuit - provisions that already exist. Can you comment on that? I am referring to the sort of thing where police might be chasing an offender along the highway past Eucla, and if they get across the South Australian border, I understand you still have the capacity to pursue them into South Australia and arrest them, if it is a hot pursuit situation.

Inspector Gaunt: No. I have served at Eucla, so I can explain this one to you. We were sworn in as special constables of South Australia. You could follow them over the border, but jurisdiction finished at the border as WA police. Unless they committed an offence whilst in South Australia, such as continuing to commit that driving offence, you could arrest them, but you then had to drive them to Penong or Ceduna to have them extradited. You could not drive them back across the border, because they were in another area of legislation, albeit, that that area is not part of this process.

The CHAIRMAN: So would that situation, an offender fleeing across the border from Eucla, for example, be addressed by this legislation?

Inspector Gaunt: No. This is Indigenous-focused on the central lands area.

Ms Thomas: Can I just add a comment there?

The CHAIRMAN: Yes.

Ms Thomas: The bill has actually been drafted so that we can have multiple cross-border regions. It has been drafted with the initial central Australia region in mind, but we have put in provisions so that we can declare other cross-border regions, and we were very much thinking in terms of the Eucla area or the Kimberley border area as to other potential cross-border regions.

The CHAIRMAN: Did you have a question on that?

Hon DONNA FARAGHER: Yes. Can I just ask a question with respect to that? Why was it decided, then, only to focus on the central area, rather than actually just saying the borders as such, like up in the Kimberley to the Northern Territory? I would have thought that perhaps that might have been easier, because you are not limited by a particular area. You have the capacity there. Why have you not chosen to actually extend it across the entire border?

Ms Thomas: We were responding to the particular concerns which were brought to government by the experiences of the NPY Women's Council and the experiences of police actually increasing their presence in that particular region; so we were responding to that particular problem area. At this stage we have provided, through regulation, that we can actually proclaim the other areas as cross-border areas, but we wanted to focus on the area where we thought there was the most critical issue, and, I suppose, really to see that it actually worked in that area before we actually extended it further along the border.

Hon DONNA FARAGHER: It would seem sensible, I would have thought, to go the entire border, but anyway -

Mr Skesteris: Can I just add to it. At the last project management group meeting in Alice Springs - I think it was on 16 August this year - in terms of the cross-border draft boundaries, the South Australian and Northern Territory police agreed that we should modify the map to include the entire border. I think the map itself is based on the practicalities of where police could actually police at the time, because once you actually go further east, basically it is desert, and it is unlikely that the police would ever be called there. But it basically covers, I think from an operational and a very practical point of view, where police would, you know, carry out their duties in that region; so the boundaries are that - just for the purpose of the regulations to give some definition.

Hon DONNA FARAGHER: Picking up on what Inspector Gaunt said in terms of the increased work being undertaken up in the Kimberley area at the moment - and the Kimberley area is not actually included within this section here - I suppose you have got a greater police presence and there is a lot of focus up in the Kimberley area at the moment, and yet, even though there is a capacity at some point in time to expand it, it is not in there at the moment. I suppose that is where my interest lies.

Inspector Gaunt: I suppose the difference there - just as an observation more than anything else - is that these communities actually exist across that border area, whereas in those other locations people are commuting because of a highway that exists, as opposed to the central desert area, which is their traditional homelands where they migrate through.

The CHAIRMAN: To Inspector Gaunt and Mr Skesteris, did you have any other observations you wanted to offer to the committee at this point?

Inspector Gaunt: The only other thing I will add is that the main strength from a policing presence in these areas is Western Australia and the Northern Territory - the South Australian police do not have a particularly strong presence in this area - and probably just to affirm with the committee that it is not our intent to take up the work of other jurisdictions. This is for the benefit of each agency because of cross-border. This legislation would in fact, if an offence occurred in South Australia, enable us to go over there, apprehend the person, bring them back to WA and process them. It is not our intent to cover their area for them and pick up any shortfalls in that area. So I just want to make that clear that we do not seek that as our purpose. We would support South Australia police and the territory in their roles in those areas, but not to take over their roles as such. That is probably the only other thing I have to add.

The CHAIRMAN: Thanks very much, Inspector Gaunt. Mr Skesteris?

Mr Skesteris: The only thing I would like to add, I think, in terms of consideration for what is a natural region in the area, is that it offers a range of benefits like economies of scale. For example, if we have one police officer at Kintore, in effect, it enables us to have four police officers when they are seen in the context of the legislation, so, in fact, it is a sharing of the resources and it is allowing a far greater seamless application of policing and justice issues. I think that very much, from a pragmatic point of view, addresses a lot of issues and makes the whole application of the services far more economically viable and better for everyone concerned. When that flows on from policing to corrective services, to prisons, to juvenile justice, it actually, I think, makes considerable sense for the jurisdictions to cooperate. I think that is very much underlined in necessity because of the remoteness; that we take a different view of how the services are provided. So I think if it does become an act, it will have benefits for everybody essentially.

[10.00 am]

The CHAIRMAN: A Western Australian police officer based in Kintore, for example, in the Northern Territory, would they present in the uniform of a Northern Territory officer?

Inspector Gaunt: No, we wear our home uniform.

The CHAIRMAN: Right. Does that ever cause any confusion?

Inspector Gaunt: No, it has not. We thought it would - probably the difference being is that the Western Australian officers are wearing blue; the Northern Territory wear the khaki. We used to wear the khaki - back then it probably would have. Now the Kiwirrkurra community clearly identifies with the WA officer as their officer, even though every time he attends there, he does it with a Northern Territory officer, but they also identify him as their WA officer when they go to Kintore. But they all have an awareness that those officers have powers in each other's jurisdiction as another officer. So they recognise them as being a second policeman, but they do draw that line in the sand, knowing which jurisdiction they are from, and that is building at Docker River as well.

Hon MATT BENSON-LIDHOLM: Are Aboriginal police liaison officers part of the process as well?

Inspector Gaunt: The WA Police have actually moved away from the -

Hon MATT BENSON-LIDHOLM: That is right.

Inspector Gaunt: - police liaison officer role. We are converting most of them to sworn officers. So we do have Aboriginal or Indigenous officers in these remote areas, but no, they are not - although the Northern Territory does have Aboriginal community officers, including one at Kintore, who also happens to be their senior lawman, which is convenient for us. The South Australian police still have that process as well, and largely police that area with those people, but we do not.

Hon MATT BENSON-LIDHOLM: Okay.

The CHAIRMAN: Thanks. Gentlemen, if you wish to excuse yourself for other duties, we have structured it that way, so you may wish to depart. Obviously, you are welcome to stay for the rest of the hearing as well, but thank you very much for your contribution.

Inspector Gaunt: You are welcome.

The CHAIRMAN: Now, I turn to Ms Thomas and Mrs Jamieson. Thanks for being patient. Thank you also for providing, Ms Thomas, responses to some questions - which we gave notice of - of which there are eight in a document headed "Cross-border Justice Bill 2007: Committee Hearing 5 December 2007: Mr Robert Meadows QC (Instructing Officer) & Helen Thomas". It begins -

1. QUESTIONS ON NOTICE

In order for us to receive that information, would you like to just formally table that document?

Ms Thomas: Yes.

The CHAIRMAN: So that document is tabled, and the committee notes the information contained therein, for which we thank you. Perhaps, Ms Thomas, while we are with you, would you like to make a brief statement on the bill while you are here, by way of commencement?

Ms Thomas: The intent of the bill?

The CHAIRMAN: If you did have a brief statement about the bill.

Ms Thomas: Yes. As I mentioned earlier, the bill is very much a government response to an issue that has come out of the community and from the experience of the police operating in that particular area. The NPY Women's Council, back in 2003, raised this as an issue at a meeting in Alice Springs, which was attended by senior judicial officers, police, and government officials working in the justice area, from all three jurisdictions. This bill has taken some time in preparing because of the complicated nature of it. Obviously, we have had to get the cooperation of all the justice agencies from the three participating jurisdictions to work together, and it has been very collaborative in that approach. All three jurisdictions contributed to the development of the drafting instructions and to the intergovernmental agreement.

We have also had to get the cooperation of the commonwealth to make very necessary amendments to the Service and Execution of Process Act, and we are very pleased to be able to say that, from the

outset, the commonwealth has been very much on side with this process, and the Standing Committee of Attorneys General has also endorsed this approach. We are aware that all of the other jurisdictions in Australia - New South Wales, Victoria, Queensland - that have cross-border areas are looking very closely at this bill, because they can see that it can serve as a model to solve similar problems in their cross-border regions as well. As a piece of legislation, we believe that as well as making it a lot easier for the police, it will also make it easier, for example, for the courts to operate in those regions. There are many scenarios that we can see this as being of benefit. One other scenario, just to inform you, is that, for example, if a WA magistrate from Kalgoorlie is on circuit somewhere such as in Warburton, and if a person is brought before the court on a WA offence, it is a purely WA matter; but if it is known that the person has outstanding warrants for matters from the Northern Territory or South Australia that fit the criteria for being dealt with as a cross-border matter, the WA magistrate can actually deal with all of those matters. They would just swap hats from being a WA magistrate to being a Northern Territory magistrate to being a South Australian magistrate. In effect, that can also be of benefit to a person in having a number of matters all dealt with and cleared up at any one time. So we believe that it will actually make the administration of justice in the area a much less difficult problem than it currently has been.

The CHAIRMAN: Thank you for that. Turning to the matter contained in the questions on notice that you provided answers to, I do note that the commonwealth has been cooperative in any facilitation necessary for these cross-border arrangements, and the answer to question 1.7 states in part that -

... the Commonwealth has agreed to make the necessary amendments to the Service and Execution of Process Act which will enable the State/Territory legislation to operate.

With that in mind, when will those changes likely occur to the commonwealth legislation?

Ms Thomas: Okay. We have had a number of discussions with the commonwealth on this matter, and they have actually been instructing their drafters prior to the federal election. They had hoped for the amendments to actually go before the federal Parliament prior to the election but, unfortunately, there was not time for that. I have spoken to my colleagues in the commonwealth Attorney-General's department whether they envisaged any different attitude from the incoming government - this was prior to the election I spoke to them about it - and they said that their belief was that if there had been a change of government at the federal level, then a new government would still honour the commitment to make the amendments to SEPA and that those officers were continuing to work on the amendments in anticipation of that. Given that the commonwealth has been so supportive of the agreement, I would like to think - but it is speculation on my part - that it would still be legislated in time to enable the state and territory legislation to come into effect as we planned, which would be around the middle of next year.

The CHAIRMAN: Around the middle of 2008?

Ms Thomas: Yes.

The CHAIRMAN: Okay; because, of course, the state and territory legislation cannot have effect, can it, until the - not at all?

Ms Thomas: No, it cannot.

The CHAIRMAN: Thanks for that. With that in mind, do you know why the commonwealth was not a party to the intergovernmental agreement?

Ms Thomas: It was mainly because the intergovernmental agreement was part of a hierarchy where we were having the Cross-border Justice Bill, and it was really an agreement between the three jurisdictions to enact, essentially, mirror legislation, and that is being supported by service-level agreements at the operational level, at agency level, to deal with, you know, the operational aspects of making sure that the legislation can work in practice. So, I think it was because we sort of saw it really as the three participating jurisdictions coming together - the other levels of

agreements, you know, they discuss issues such as sharing resources and what have you. So, I suppose really it was just that we saw it as an initial agreement between the three jurisdictions, but the three jurisdictions essentially went to the commonwealth in unison. It was put as an agenda item at the Standing Committee of Attorneys General, initially by Northern Territory, and has been discussed there. The aspects of the agreement about committing to introduce legislation based on the model bill - of course, the commonwealth would not be introducing a bill such as ours; it just has to make a few amendments to its own legislation.

[10.10 am]

The CHAIRMAN: In effect, it is not an active party.

Ms Thomas: No, it would not be an active party, but, nevertheless, a very essential partner and, as I say, they have been very cooperative.

The CHAIRMAN: That is a useful discussion of that point. Thank you.

Hon DONNA FARAGHER: Could I just ask one question?

The CHAIRMAN: Yes; Hon Donna Faragher.

Hon DONNA FARAGHER: Just in terms of the authorised officers who will be able to access the legislation, does that include justices of the peace as well, given that they give bail and warrants and all those sorts of things? Would they be covered under this as well? I cannot find them. I see you have -

Ms Thomas: No, we excluded justices of the peace -

Mrs Jamieson: If I might -

Ms Thomas: Yes.

Mrs Jamieson: If you look at the definition of “prescribed court” in the act, it is actually a court constituted by a magistrate.

Hon DONNA FARAGHER: I was just trying to find it there; that is all. Thank you.

The CHAIRMAN: Some other questions have arisen - and, Mrs Jamieson, obviously, please feel free to respond as well. My next question is: in the event that a suspect is injured in custody, which police minister would carry the parliamentary accountability?

Mrs Jamieson: My understanding is that if the offender was a WA offender and was arrested for a WA offence, he is in WA custody, although he may in fact physically be in another jurisdiction, and so the WA minister would carry that responsibility.

The CHAIRMAN: If the WA offender was taken into custody in another jurisdiction by an officer of that other jurisdiction and held in their custody in one of their institutions, would that still apply if something were to happen to the prisoner?

Mrs Jamieson: It depends on what offence he was taken into custody on. If he was in another jurisdiction and taken into custody for an offence against the law of that jurisdiction, he would be taken into custody by - for example, if he was in South Australia, he would need to be taken into custody by a South Australian police officer, and therefore he is in South Australian custody. If he were taken into custody in South Australia for a WA offence, it would only be a WA police officer. Now, in fact, that could be the same person, because one person could hold appointments as a special constable in three different jurisdictions.

The CHAIRMAN: Okay; I think that clarifies that. What implications are there in tribal law remedies being displaced by criminal law proceedings in these remote areas? How are these provisions going to sit with those tribal laws -

Mrs Jamieson: I am not sure what the legal position in relation to the acceptance of customary law is, but the law that will be applied will be the law of the jurisdiction of the offence. So, for

example, if the person is being tried for a WA offence, then the WA criminal law and all of the WA sentencing provisions will apply; similarly, if it is for a Northern Territory or a South Australian offence, the law of the Northern Territory or South Australia will apply. So, for example, if - and this is a hypothetical situation because I am not sufficiently familiar with the criminal law and sentencing and the acceptance of customary law - but, for example, if one of the jurisdictions took into account, for example, any customary law punishment that had been handed out to the offender in setting the sentence, and that was actually part of the sentencing law of that jurisdiction, then, obviously, that sentence would be affected, but only that sentence; not the sentences being imposed for the offences in the other jurisdictions.

The CHAIRMAN: Okay. I appreciate this bill is not about traditional tribal law, and so we have a limited capacity, obviously, to discuss it. However, having regard for the fact that there is an impact of criminal law being applied where tribal law also sometimes exists, what sort of level of community consultation took place in the development of the agreement and the legislation?

Ms Thomas: As I said before, the initial consultation happened with the NPY Women's Council in Alice Springs. Since then, we have briefed the Aboriginal Legal Service, and the Aboriginal Legal Service was also represented on a Kalgoorlie reference group which was chaired by the Kalgoorlie magistrates and had representation from police, prisons, community corrections, as well as the Aboriginal Legal Service and Legal Aid, and they provided input. There was also a state steering committee, and the president of the Shire of Ngaanyatjarra was a member of that. We did not go further into community consultation, mainly because this bill is not about creating new law; it is about allowing existing laws to be applied outside WA and to allow existing laws of the Northern Territory and South Australia to be applied within WA. Having said that, we have recently met with one of the managers from the NPY Women's Council who was visiting Perth - this was just a few weeks ago - and we briefed her and updated her on the status of the bill. She was very pleased and believed that it would be of great benefit to them and to the people in the community.

The CHAIRMAN: Thanks. We have gone a little over our allocated time, but are there any closing remarks that you wanted to offer - Helen or Gale?

Ms Thomas: No; only to say that we believe that this is a bill which is something which can provide a practical solution to some of the problems of offending behaviour which has a dysfunctional effect on the communities who are in those areas.

Mrs Jamieson: I think, too, if I might emphasise that we are not trying to set up a new body of law that is to apply; it is simply allowing the geographical extension of existing law in each jurisdiction, and the aim is not to provide some kind of Rolls Royce system of justice for this tri-jurisdiction area, but simply to provide to that area a level of justice that the rest of the population of WA, the Northern Territory and South Australia enjoy, so that they do not have a lower level of justice being distributed in that area simply because of the remoteness.

The CHAIRMAN: Thank you for those closing remarks, and thank you also for your assistance this morning and in providing the other material - the questions that were taken on notice. We have run a bit over time, but I will draw our hearing to a close for now and bid you a very good morning.

The Witnesses: Thank you.

Hearing concluded at 10.19 am